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FREESCALE SEMICONDUCTOR, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MEDIATEK INC.,

Plaintiff,

v.

FREESCALE SEMICONDUCTOR, INC.,

Defendant.

Case No. 4:11-CV-05341 YGR (JSC)

**FREESCALE'S MOTION FOR
JUDGMENT AS A MATTER OF LAW
ON LITERAL INFRINGEMENT,
INFRINGEMENT UNDER THE
DOCTRINE OF EQUIVALENTS,
INDIRECT INFRINGEMENT, AND
WILLFUL INFRINGEMENT**

Hon. Yvonne Gonzalez Rogers

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that as soon as the matter may be heard by The Honorable Yvonne Gonzalez Rogers at the United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, Defendant and Counterclaimant Freescale Semiconductor, Inc. (Freescale) shall and hereby does respectfully seek an order granting judgment as a matter of law. This motion is based on this notice of motion and supporting memorandum, the trial record, and such other written or oral argument as was presented and may be presented at or before the time this motion is taken under submission by the Court.

RELIEF REQUESTED

Freescale respectfully seeks an order granting it judgment as a matter of law that plaintiff MediaTek Inc. (MediaTek) has failed to show that: (A) Freescale has literally infringed any of the patents-in-suit; (B) Freescale has infringed any of the patents-in-suit under the doctrine of equivalents; (C) Freescale has willfully infringed any of the patents-in-suit; and/or (D) Freescale is liable for indirect infringement of any of the patents-in-suit.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

MediaTek has failed to meet its burden regarding several issues in its case. MediaTek has failed to prove that Freescale literally infringes the patents-in-suit. MediaTek has not met its evidentiary burden to prove that Freescale infringes the patents-in-suit under the doctrine of equivalents. MediaTek has failed to meet its evidentiary burden that Freescale has willfully infringed any of the patents-in-suit. MediaTek has likewise failed to satisfy its evidentiary burden that Freescale has contributed or induced infringement of any of the patents-in-suit. MediaTek has been fully heard on these issues. As no reasonable jury could find for MediaTek on these issues, Freescale is entitled to judgment as a matter of law.

For direct infringement, in addition to the relief requested in this motion, Freescale is in the process of separately filing or has already separately filed specific motions for judgment as a matter of law. Those motions are directed to the '331 patent's "plurality of registers" and "clock frequency requirement" limitations, the '845 patent's "arbitrate among" limitation, and the "predetermined way" limitation of the '753 patent.

II. LEGAL STANDARD

Judgment as a matter of law is appropriate when "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Fed. R. Civ. P. 50(a)(1). In the Ninth Circuit, "[t]he test is whether 'the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to that of the jury.'" White v. Ford Motor Co., 312 F.3d 998, 1010 (9th Cir. 2002) (quoting Forrett v. Richardson, 112 F.3d 416, 419 (9th Cir. 1997)). A "mere scintilla" of evidence is not enough to defeat a motion for judgment as a matter of law. Sullivan v. Cnty. of Allegheny, Pa., 112 Fed. App'x 176, 178 (3d Cir. 2004) ("Federal courts do not follow the rule that a scintilla of evidence is enough.") (citing Walter v. Holiday Inns, Inc., 985 F.2d 1232, 1238 (3d Cir. 1993) (internal quotations omitted)); see also Ginsburg v. Richardson, 436 F.2d 1146, 1148 (3d Cir. 1971) (holding that substantial evidence "consists of more than a mere scintilla of evidence but may be

somewhat less than a preponderance”) (quoting Laws v. Celebrezze, 368 F.2d 640, 642 (4th Cir. 1966)).

III. FREESCALE IS ENTITLED TO JUDGMENT OF NON-INFRINGEMENT

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” Markman v. Westview Instruments, Inc., 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc) (citations omitted), aff’d, 517 U.S. 370 (1996); Solvay S.A. v. Honeywell Int’l, Inc., 622 F.3d 1367, 1379 (Fed. Cir. 2010).

A. Freescale Does Not Infringe U.S. Patent No. 6,088,753 As A Matter of Law

MediaTek has not offered sufficient evidence that Freescale infringes (either literally or under the doctrine of equivalents) claim 2 of the ’753 patent. Specifically, there is no evidence that any accused product meets the “interconnecting . . . in a predetermined way” limitation of claim 2. As discussed in Freescale Semiconductor, Inc.’s Motion for Judgment as a Matter of Law Regarding Claim Construction and Noninfringement of Claim 2 of U.S. Patent No. 6,088,753 (Dkt. No. 681), MediaTek has presented its case under incorrect claim constructions and MediaTek failed to demonstrate infringement of at least the above limitation of claim 2, as properly construed. Freescale’s JMOL (Dkt. No. 681) is incorporated in its entirety herein. No jury could reasonably find that Freescale infringes claim 2 of the ’753 patent and therefore Freescale is entitled to a judgment as a matter of law that it does not infringe claim 2 of the ’753 patent.

B. Freescale Does Not Infringe U.S. Patent No. 6,738,845 As A Matter of Law

MediaTek has not offered sufficient evidence to meet its burden of showing that Freescale infringes (either literally or under the doctrine of equivalents) claims 1 or 21 of the ’845 patent. With respect to claim 1, MediaTek has not shown that Freescale satisfies the “arranged to arbitrate among at least the first data processing subsystem, the second data processing subsystem, and the DMA subsystem for access to the first slave subsystem” limitation. As

discussed in Freescale Semiconductor, Inc.'s Motion for Judgment as a Matter of Law Regarding Claim Construction and Noninfringement of U.S. Patent No. 6,738,845 (Dkt. No. 660) and Freescale Semiconductor, Inc.'s Opposition to MediaTek's JMOL (Dkt. No. 666), MediaTek has not offered sufficient evidence that the accused products arbitrate among at least the first data processing subsystem, the second data processing subsystem, and the DMA subsystem. Freescale Semiconductor, Inc.'s JMOL (Dkt. No. 660) and opposition to MediaTek's JMOL (Dkt. No. 666) are incorporated in their entirety herein. No jury could reasonably find that Freescale infringes claim 1 of the '845 patent and therefore Freescale is entitled to a judgment as a matter of law that it does not infringe claim 1 of the '845 patent.

1. The Accused Products Lack a Second Slave Subsystem

Nor has MediaTek presented sufficient evidence that the accused products satisfy the "second slave subsystem" limitation in claim 21. MediaTek's expert's conclusory testimony that merely identifies a component (ESDCTLV2 block) within one of the accused products (the i.MX-6) is insufficient to establish that this component meets the "second slave subsystem" claim limitation.

19 Q. Let's check that box.

20 and now let's focus on limitation D. What does limitation

21 D recite?

22 A. A second slave subsystem comprising a fourth bus.

23 Q. Okay. Let's compare that to Freescale's products.

24 Let's go to slide 81. Let's go back to the schematic at

25 JTX30C.

1 What is the second slave subsystem in Freescale's

2 products, the i.MX51 and -53?

3 A. It's the ESDCT -- ESDCTLV2 block. And this is the

4 external memory controller. So ESDCTL stands for "enhanced

5 SDRAM controller" version 2.

6 Q. And that's the block that you've circled in green at the

7 top right of the figure?

8 A. That's the slave subsystem including that block, yes.

3 Q. Dr. Asanovic, before the break, we were talking about the

4 i.MX6SDL and DQ products in claim 1 of the '845 patent.

5 can you -- is it fair to use, for example, the DQ product

6 as a representative?

7 A. Yes.

(Trial Tr. at 682:20-683:8, 707:3-7 (Asanovic).) This testimony is insufficient to demonstrate that the i.MX6 products infringe claim 21 of the '845 patent.

1 The testimony with regard to the alleged infringement of claim 21 by the other accused
2 products, i.MX51 and i.MX53, is even more conclusory. (Trial Tr. at 684:5-10 (Asanovic)
3 (“Q. And now let’s go back to the second slave subsystem. Let’s go back to claim 21 and turn to
4 slide 82. Can you tell us whether the i.MX51 and -53 products practice limitation D? A. They
5 do.”).) This testimony is plainly insufficient to prove that Freescale’s i.MX51 and i.MX53
6 products practice claim 21 of the ’845 patent.

7 **2. The Requests for Access to the Slave Subsystems of Accused**
8 **Products are Not Set at the Same Priority**

9 MediaTek’s evidence that the accused products satisfies the “during any period when all
10 requests for access to the first one of the first and second slave subsystems are of the same
11 priority level” limitation of claim 21 is similarly insufficient. Again, Dr. Asanovic’s testimony is
12 entirely conclusory. (Trial Tr. at 689:3-5 (Asanovic) (“Q. Can the ARM and the IPU in
13 Freescale’s products make requests that have the same priority? A. Yes, they can.”).) Though
14 Dr. Asanovic then identifies the portions of reference manuals as evidence meeting of the claim,
15 this too is conclusory.

16 The portions of JTX-0021 and JTX-0022 that MediaTek’s expert identifies to support this
17 conclusion is insufficient and do not directly implicate the accused masters. Page 247 of JTX-
18 0022 and Page 143 at JTX-0021 discusses what would occur if masters had equal priority, but
19 does not indicate that the accused masters (the ARM and IPU) are actually capable of having
20 equal priority, as configured and sold by Freescale. More importantly, as Dr. Asanovic appears to
21 acknowledge, the portion of the reference manuals identified by Dr. Asanovic refers to the
22 bandwidth available to the masters after arbitration occurs. (Trial Tr. at 689:9-691:22
23 (Asanovic).) This is fundamentally different than the priority of the slaves to initially access the
24 buses.

25 In light of the foregoing, it is clear that MediaTek has not presented sufficient evidence of
26 infringement of claim 21. Thus, no jury could reasonably find that Freescale infringes claim 21
27 of the ’845 patent and therefore Freescale is entitled to a judgment as a matter of law that it does
28 not infringe claim 21 of the ’845 patent.

C. Freescale Does Not Infringe U.S. Patent No. 6,889,331 As A Matter of Law

MediaTek has not offered sufficient evidence that Freescale infringes (either literally or under the doctrine of equivalents) claims 11 or 35 of the '331 patent. Specifically, there is no evidence that any accused product meets the following limitations of claim 11:

- “clock frequency requirement”
- “plurality of registers”

1. The Registers of the Accused Products Do Not Hold a Clock Frequency Requirement

MediaTek has failed to present sufficient evidence demonstrating that the accused products meet the “clock frequency requirement” or the “plurality of registers” limitations of claim 11. As discussed in Freescale Semiconductor, Inc.’s Motion for Judgment as a Matter of Law Regarding Claim Construction and Noninfringement of U.S. Patent No. 6,889,331 (Dkt. No. 680) and Freescale Semiconductor, Inc.’s Motion for Judgment as a Matter of Law Regarding Claim Construction of “Clock Frequency Requirement” and Noninfringement of U.S. Patent No. 6,889,331 (Dkt. No. 682), MediaTek has presented its case under incorrect claim constructions and MediaTek failed to demonstrate infringement of at least the above limitation of claim 11, as properly construed. Freescale’s two JMOL’s regarding the '331 patent (Dkt. No. 680 & Dkt. No. 682) are incorporated in their entirety herein. No jury could reasonably find that Freescale infringes claim 11 of the '331 patent and therefore Freescale is entitled to a judgment as a matter of law that it does not infringe claim 11 of the '331 patent.

Additionally, there is no evidence that Freescale infringes claim 35 of the '331 patent. More specifically, there is no evidence that any accused product satisfies the following limitations of claim 35:

- “at least one processor having a plurality of components operating with a plurality of clock signals;”
- “a dynamic power controller, connected to the power supply and the clock controller, adapted to monitor the at least one processor to determine a clock frequency requirement of the at least one processor and to determine a voltage requirement based on the clock frequency requirement, and configured to

1 transition the power supply and the clock controller to a power state defined by the
2 clock frequency frequent and the voltage requirement.”

3 MediaTek has not offered a shred of fact or expert testimony regarding claim 35 of the
4 '331 patent. MediaTek's expert opinions regarding the '331 patent were limited to claim 11.
5 (Trial Tr. at 717:2-758:7 (Asanovic) (discussion of '331 patent).) A search of the entire trial
6 transcript does not turn up a single reference to claim 35. Therefore, no jury could reasonably
7 find that MediaTek has proven that Freescale infringes claim 35 of the '331 patent and Freescale
8 is entitled to a judgment of non-infringement as a matter of law that it does not infringe claim 35
9 of the '331 patent.

10 **IV. FREESCALE IS ENTITLED TO JUDGMENT OF NON-INFRINGEMENT** 11 **UNDER THE DOCTRINE OF EQUIVALENTS**

12 MediaTek has offered no evidence, testimony, or analysis supporting its claims that the
13 accused products infringe the asserted patents under the doctrine of equivalents, let alone a proper
14 claim by claim analysis indicating that there are no substantial differences between the elements
15 of the accused products' functionality and the limitations of the asserted claims, or that the
16 elements of the accused products perform substantially the same function in substantially the
17 same way to obtain substantially the same result as the limitations of the asserted claims. See TIP
18 Sys., LLC v. Phillips & Brooks/Gladwin, Inc., 529 F.3d 1364, 1376-77 (Fed. Cir. 2008)
19 (infringement under doctrine of equivalents may only be found where the accused device contains
20 an “insubstantial” change from the claimed invention or where the accused device functions in
21 substantially the same way as the claimed invention) (citing Graver Tank & Mfg. Co. v. Linde
22 Air Prods. Co., 339 U.S. 605, 610 (1950)); Voda v. Cordis Corp., 536 F.3d 1311, 1326 (Fed. Cir.
23 2008) (discussing doctrine of equivalence function, way, result analysis). MediaTek has
24 completely failed to present any evidence under either formulation of the doctrine of equivalents
25 analysis, and therefore Freescale is entitled to judgment as a matter of law.

26 Notably, MediaTek's expert failed to provide any analysis whatsoever under the doctrine
27 of equivalents. Absent such claim by claim analysis, MediaTek cannot satisfy its burden to prove
28 infringement under the doctrine of equivalents. Network Commerce, Inc. v. Microsoft Corp.,

422 F.3d 1353, 1363 (Fed. Cir. 2005) (“[T]he difficulties and complexities of the doctrine require that evidence be presented to the jury or other fact-finder through the particularized testimony of a person of ordinary skill in the art, typically a qualified expert, who (on a limitation-by-limitation basis) describes the claim limitations and establishes that those skilled in the art would recognize the equivalents.”). There is no testimony in evidence that MediaTek has offered that demonstrates that Dr. Asanovic has evaluated each accused Freescale product and compared each of them to each asserted claim in each asserted patent and rendered an opinion that each product infringes the asserted patents under the doctrine of equivalents. Because MediaTek has failed to meet its burden, Freescale is entitled to a judgment of non-infringement as a matter of law that it does not infringe any of the asserted patents pursuant to the doctrine of equivalents.

V. FREESCALE IS ENTITLED TO JUDGMENT OF NO WILLFUL INFRINGEMENT

In order to prove that Freescale has willfully infringed any of the patents-in-suit, MediaTek must prove, by clear and convincing evidence, that there is an objectively high likelihood that Freescale’s actions constituted infringement of a valid patent and that Freescale subjectively knew or recklessly disregarded that particular claims were valid and infringed . In re Seagate Tech., LLC, 497 F.3d 1360, 1371 (Fed. Cir. 2007) (en banc). No reasonable jury could find that any infringement of the asserted patents was willful by clear and convincing evidence and thus Freescale is entitled to judgment as a matter of law.

To establish willfulness, “a patentee must show by clear and convincing evidence that the infringer acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. The state of mind of the accused infringer is not relevant to this objective inquiry. If this threshold objective standard is satisfied, the patentee must also demonstrate that this objectively-defined risk . . . was either known or so obvious that it should have been known to the accused infringer.” Seagate, 497 F.3d at 1371 (internal citation omitted). Thus, the willfulness inquiry is a two-prong analysis, requiring an objective inquiry and a subjective inquiry. The objective inquiry is a question for the Court, and the subjective inquiry is a question for the jury. Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., Inc., 682 F.3d 1003, 1007 (Fed. Cir.

2012). Both prongs must be established for the Court to make an ultimate finding of willfulness. In this case, there is no evidence to find either prong is met.

First, to establish objective willfulness, MediaTek must prove by clear and convincing evidence that there was an “objectively high likelihood that [Freescale’s] actions constituted infringement of a valid patent.” Bard, 682 F.3d at 1005 (citing Seagate, 497 F.3d at 1371). If Freescale had an objectively reasonable defense to infringement, its infringement cannot be said to be objectively willful, and objective willfulness fails as a matter of law. See Spine Solutions, Inc. v. Medtronic Sofamor Danek USA, Inc., 620 F.3d 1305, 1319 (Fed. Cir. 2010) (“The ‘objective’ prong of Seagate tends not to be met where an accused infringer relies on a reasonable defense to a charge of infringement.”); Bard, 682 F.3d at 1006 (objective willfulness determination “entails an objective assessment of potential defenses based on the risk presented by the patent.”).

In this case, Dr. Vahid and Dr. Asanovic had differing opinions concerning whether the prior art references anticipate the ’331 and ’753 patents and whether Freescale infringes the ’331, ’753, and ’854 patents. Dr. Vahid put forth a robust invalidity defense against the ’331 and ’753 patents, finding references that render those patents invalid as anticipated. (Trial Tr. at 1796:5-1809:19, 1854:4-1867:14 (Vahid).) In light of Dr. Vahid’s opinion and the language in the prior art references, the reasonable litigant could have believed that the ’331 and ’753 patents-in-suit are anticipated by the prior art references. Accordingly, the Court cannot find that Freescale’s reliance on an invalidity defense was objectively baseless.

Further, following becoming aware of the patents-in-suit, Freescale promptly studied the patents, investigated the merits of MediaTek’s patent infringement allegations, and developed sound legal defenses to those allegations including the reasonable beliefs that those patents were not infringed and invalid. See, e.g., Gustafson, Inc. v. Intersystems Indus. Prods., Inc., 897 F.2d 508, 511 (Fed. Cir. 1990) (“Exercising due care, a party may continue to manufacture and may present what in good faith it believes to be a legitimate defense without risk of being found on that basis alone a willful infringer. That such a defense proves unsuccessful does not establish that infringement was willful.”) (citation omitted); see also Powell v. Home Depot U.S.A., Inc.,

663 F.3d 1221, 1236 (Fed. Cir. 2011) (explaining that the appeal often presents question whether defense or non-infringement theory was reasonable). Freescale's good faith defense of non-infringement and invalidity alone weighs in favor of granting Freescale's JMOL for a finding of willfulness.

Second, to establish subjective willfulness, MediaTek must prove by clear and convincing evidence that Freescale subjectively knew or recklessly disregarded that particular claims were valid and infringed. i4i Ltd. P'ship v. Microsoft Corp., 598 F.3d 831, 860 (Fed. Cir. 2010). Knowledge of the asserted patents is mandatory but insufficient. Id. Willfulness cannot be proven where knowledge of the patents is not shown. LML Holdings, Inc. v. Pac. Coast Dist. Inc., No. 11-CV-06173 YGR, 2012 WL 1965878, at *4 (N.D. Cal. May 30, 2012); Sealant Sys. Int'l, Inc. v. TEK Global, No. C 11-0074 PSG, 2012 WL 13662, at *3-4 (N.D. Cal. Jan. 4, 2012). This standard has not been met in this case.

MediaTek failed to prove that Freescale had knowledge of the three patents-in-suit prior to MediaTek's filing of a complaint in November 2011. In fact, MediaTek admitted that the first notice of the patents-in-suit was when the complaint was filed and supplemented in and around November 2011. (Yang Dep. at 219:5-22.) MediaTek's counsel admitted this during the trial when Freescale was attempting to admit evidence of its first notice of the patents-in-suit:

We are going to make no suggestion that during the lead-up from 2007 to 2011 that somehow we notified Freescale of these patents. We're trying to keep this out. What she's suggesting is that she needs to have this evidence to somehow counter some kind of inference that -- that they were notified during this period. We're not going to make that inference. We have no basis to make that inference.

(Trial Tr. at 1187:1-13 (admission of MediaTek's counsel, Keith Slenkovitch).)

Further, the parties have stipulated to the damages period. (See Dkt. No. 589, Order Granting Add'l Joint Stipulations for Trial Purposes ¶¶ 33-34 (establishing the damages period for the '845 and '331 patents from 11/3/2011 to present and the '753 patent from 11/4/2011 to present).) As explained above, MediaTek's claim of willfulness may only be based on pre-filing conduct. Seagate, 497 F.3d at 1374. Thus, as the stipulated damages period begins at the time of the filing of the litigation, and MediaTek cannot point to any pre-filing knowledge of the patent,

1 MediaTek is unable to recover enhanced damages due to willful infringement on this theory.

2 Moreover, alleged copying is not proof of willfulness. MediaTek accused Freescale of
3 copying in its opening statement but provided no evidence of copying at trial. It is error to
4 conclude “that copying is synonymous with willful infringement.” Princeton Biochemicals, Inc.
5 v. Beckman Ins., Inc., 180 F.R.D. 254, 258 n.3 (D.N.J. 1997). And, in any event, MediaTek
6 provided absolutely no evidence of copying.

7 Further, any evidence of copying is irrelevant because there is no evidence that any
8 MediaTek product practices the asserted claims. At a minimum, copying evidence must relate to
9 the asserted claims — MediaTek has provided no evidence that it has a product that practices any
10 claim of any patents-in-suit or that Freescale copied any such product. ICU Med., Inc. v. RyMed
11 Techs., Inc., 752 F. Supp. 2d 486, 493 (D. Del. 2010); VNUS Med. Techs., Inc., v. Diomed
12 Holdings, Inc., 527 F. Supp. 2d 1072, 1073-74 (N.D. Cal. 2007). Therefore, Freescale is entitled
13 to judgment as a matter of law of no willful infringement.

14 MediaTek’s willfulness claim must be based on Freescale’s pre-filing conduct because it
15 cannot prove post-filing willfulness. Seagate, 497 F.3d at 1374 (“A patentee who does not
16 attempt to stop an accused infringer’s activities [via preliminary injunction] should not be allowed
17 to accrue enhanced damages based solely on the infringer’s post-filing conduct.”); LML
18 Holdings, Inc., No. 11-CV-06173 YGR, 2012 WL 1965878, at *5 (Circumstances where
19 infringer’s post-filing conduct found willful involved material change that could create an
20 objectively high likelihood of infringing a valid patent. . . . Otherwise, accused infringer must
21 have pre-filing knowledge of patents at issue before patentee can accrue enhanced damages based
22 on post-filing willful conduct) (citations omitted). MediaTek has not moved for a preliminary
23 injunction. Nor has MediaTek has not offered any evidence at trial that Freescale knew that there
24 was a high likelihood that it was infringing a valid patent. Thus, the combination of a lack of pre-
25 filing knowledge of the patents or a motion for a preliminary injunction precludes MediaTek from
26 seeking post-filing willful infringement.

27 In sum, MediaTek’s proof of willfulness, both objective and subjective, pre-filing and
28 post-filing, is deficient, and Freescale is entitled to judgment as a matter of law.

VI. FREESCALE IS ENTITLED TO JUDGMENT OF NO INDIRECT INFRINGEMENT

There is no evidence that Freescale has indirectly infringed any patent-in-suit. In particular, MediaTek has not presented evidence that Freescale knowingly induced or contributed to infringement. See Commil USA, LLC v. Cisco Sys., Inc., 720 F.3d 1361, 1369 (Fed. Cir. 2013).

A claim for actively inducing infringement requires scienter and mens rea. Global-Tech Appliances, Inc. v. SEB S.A., 131 S. Ct. 2060, 2068 (2011). Thus, to prevail on an inducement claim, MediaTek must show “first that there has been direct infringement, and second that [Freescale] knowingly induced infringement and possessed specific intent to encourage another’s infringement.” Kyocera Wireless Corp. v. Int’l Trade Comm’n, 545 F.3d 1340, 1353-54 (Fed. Cir. 2008) (internal quotation marks and citation omitted); accord DSU Med. Corp. v. JMS Co. Ltd., 471 F.3d 1293, 1306 (Fed. Cir. 2006) (en banc). “[M]ere knowledge of possible infringement by others does not amount to inducement; [rather,] specific intent and action to induce infringement must be proven.” DSU, 471 F.3d at 1305 (citation omitted).

MediaTek offered no evidence sufficient for a reasonable jury to find that Freescale knew that any of its acts would constitute infringement of the asserted patents. Nor did MediaTek offer any evidence sufficient for a reasonable jury to find that Freescale “specifically intended” that any alleged direct infringer (a Freescale customer) infringe the asserted patents. In fact, MediaTek offered no evidence whatsoever as to customer use and thus cannot prove indirect infringement.

In particular, MediaTek has not offered evidence demonstrating that Freescale supplied its products to customers with “knowledge that [its customers’ allegedly] induced acts caused infringement” of the accused patents. Commil USA, 720 F.3d at 1366 (quoting Global-Tech, 131 S. Ct. at 2068) (internal quotations omitted). MediaTek has not proven that Freescale causes Continental to prompt Ford to import cars with Sync’s containing i.MX products. Likewise, MediaTek has not proven that Freescale causes Foxconn to prompt Lab126 to import eReaders containing i.MX products. The record is devoid of any evidence that Freescale knowingly

1 supplied its customers with products that it knew would cause its customers (or their customers)
2 to infringe the patents-in-suit. MediaTek has not met its burden in indirect infringement. Id.

3 Even MediaTek's attorneys' argument relating to inducement is insufficient to prove
4 inducement as a matter of law. (See, e.g., Trial Tr. at 841:16-18 (arguing that "Freescale knows
5 that its infringing i.MX 31 and i.MX 51 chips are built into systems specifically for cars and
6 trucks sold in the United States.")) Mere knowledge that an allegedly infringing chip is placed
7 into an end product is not sufficient to show inducement.

8 MediaTek's expert's conclusory testimony regarding the purpose and use of Freescale's
9 reference manuals (e.g., Trial Tr. at 759:16-24 (Asanovic)), its SABRE platform (e.g., Trial Tr. at
10 759:1-762:24 (Asanovic)), and Software Development Tool Resources (e.g., Trial Tr. at 766:5-21
11 (Asanovic), Trial Tr. at 768:5-15 (discussion regarding Ford Sync)) are wholly insufficient to
12 prove the requisite state of mind, and therefore insufficient as a matter of law to demonstrate
13 induced infringement. See Unisone Strategic IP, Inc. v. Life Techs. Corp., No. 3:13-cv-1278-
14 GPC-JMA, 2013 U.S. Dist. LEXIS 151761, at *8 (S.D. Cal. Oct. 22, 2013) (granting motion to
15 dismiss claim of induced infringement because "finding that allegations that defendant 'provides
16 instruction, technical support, and training for using its own software' are conclusory and not
17 sufficient to plausibly infer that Defendant had the specific intent to induce others to infringe").
18 None of these customer resources provide any suggestion that Freescale knowingly or took
19 deliberate action to avoid learning that the allegedly induced acts of its customers infringed. See
20 Global-Tech, 131 S. Ct. at 2070-71; Kyocera Wireless, 545 F.3d at 1354 ("[T]he specific intent
21 necessary to induce infringement requires more than just intent to cause the acts that produce
22 direct infringement . . . the inducer must have an affirmative intent to cause direct infringement.")
23 (internal quotations and citations omitted).

24 Nor has MediaTek offered any evidence that the accused Freescale products are not a
25 staple product suitable for non-infringing use, or that Freescale provided its customers the
26 accused products with knowledge that the component was especially made or adapted for use in a
27 manner that infringed the asserted patents. See Vita-Mix Corp. v. Basic Holding, Inc., 581 F.3d
28 1317, 1327 (Fed. Cir. 2009); Fujitsu Ltd. v. Netgear Inc., 620 F.3d 1321, 1330 (Fed. Cir. 2010)

1 (“Our case law is clear that [plaintiff] must show that [defendant] knew that the combination for
 2 which its components were especially made was both patented and infringing.”) (internal
 3 quotations and citations omitted); Radware, Ltd. v. A10 Networks, Inc., No. C-13-02021-RMW,
 4 2013 U.S. Dist. LEXIS 136942, at *5 (N.D. Cal. Sept. 24, 2013) (“An essential element of
 5 indirect infringement claim under both §§ 271(b) and(c) is that the accused infringer has
 6 knowledge of the relevant patents and knowledge that its acts contribute to or encourage
 7 the infringement of those patents.”) (emphasis in original).

8 Further, Freescale’s good-faith belief that it does not infringe the asserted patents and that
 9 the ’331 and ’753 patents are invalid also prevents a showing of induced infringement.
 10 See Commil USA, 720 F.3d at 1368-69 (holding that “inducer’s good-faith belief of invalidity
 11 may negate the requisite intent for induced infringement”); DSU, 471 F.3d at 1307 (finding belief
 12 of non-infringement sufficient evidence to support the jury’s verdict of no induced
 13 infringement); Ecolab, Inc. v. FMC Corp., 569 F.3d 1335, 1351 (Fed. Cir. 2009), amended on
 14 reh’g in part, 366 F. App’x 154 (Fed. Cir. 2009) (explaining that reasonable non-infringement
 15 belief sufficient to support jury’s verdict that defendant did not possess the required intent). This,
 16 in combination with MediaTek’s lack of evidence regarding customer use of Freescale’s products,
 17 demonstrates that MediaTek cannot prove indirect infringement of any of the patents-in-suit and
 18 that Freescale is entitled to judgment as a matter of law.

19 VII. CONCLUSION

20 For the aforementioned reasons, Freescale is entitled to judgment as a matter of law that it
 21 does not infringe the patents-in-suit either literally or under the doctrine of equivalents, does not
 22 willfully infringe the patents-in-suit, and does not indirectly infringe the claims of the asserted
 23 patents.

1 Dated: September 15, 2014

Respectfully submitted,

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17 **ATTESTATION OF E-FILED SIGNATURE**

18 I, Rudy Kim, am the ECF User whose ID and password are being used to file this
19 document. In compliance with General Order 45, X.B., I hereby attest that Alexander J. Hadjis
20 has concurred in this filing.

21 Dated: September 15, 2014

/s/ Rudy Kim

Rudy Kim